

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO.1272 OF 2004

Tulsiram Dnyanu Shinde .. Appellant  
Versus  
Jagannath Ramchandra Bhise & Ors. Respondents

Mr.D.S.Sawant & Rajesh B. Parab for appellant

CORAM : P.V.KAKADE, J.  
DATE : 5TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Satara allowing the appeal of the plaintiff and setting aside the judgment and order passed by Civil Judge, Junior Division, Vaduj dismissing the suit of the plaintiff for perpetual injunction simplicitor.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for injunction simplicitor against the defendants on the ground that the suit land was owned by him and he was in possession thereof and since the defendants had obstructed the possession of the plaintiff the suit came to be filed. The defendants challenged the suit on various grounds. The defendant no.3 came with the case that he was acquired title over the suit land being a purchaser. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove his ownership title over the suit property as well as lawful possession therein. It was also held that the defendant no.3 had also proved that he had acquired title in his capacity as deemed purchased and finally dismissed the suit. The appeal was carried to the District Court, Satara.

. The learned lower appellate court judge after hearing both the parties came to the conclusion that the lower court erred in recording the findings on the issues framed and held that the plaintiff had proved that he was in lawful possession of the suit property along with the defendant nos.1 and 2 at the time of

filing of the suit and on this ground the suit for perpetual injunction came to be decreed and appeal was allowed. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. All the issues involved are the issues of facts, which are adjudicated by the learned lower appellate court judge on the basis of available evidence and it appears that no fault can be found with the findings recorded by the lower appellate court in its judgment. It may be noted that both the courts below have come to concurrent conclusion in respect of the title of the present appellant. However that was considered immaterial for the purpose of adjudication of the suit for injunction simplicitor, and therefore, that aspect need not be considered at this stage. Be as it may, the fact remains that the plaintiff has proved his possession in the suit property on the date of the suit and as such he was held entitled for perpetual injunction simplicitor. In view of this factual matrix I do not intend to interfere with the findings recorded by the appellate court and as such appeal stands dismissed.

. Consequently the Civil Application No.1720 of 2004 also stands dismissed.